

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

ORLANDO FIGUEROA  
TDCJ-CID NO. 1642016  
v.  
RICK THALER

§  
§  
§  
§

C.A. NO. C-11-233

**OPINION DENYING MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Estelle Unit in Huntsville, Texas.

Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging a state conviction. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 37).

Rule 8(a) of the Rules Governing Section 2254 Cases states that “[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.” Rule 8(c) further requires that “[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare.” The Fifth Circuit has explained that “[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute.” Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing the basis for an evidentiary hearing).

Petitioner is challenging his convictions for possession of a controlled substance by the 148th Judicial District Court in Nueces County, Texas. (D.E. 1, at 2). In the pending motion, he argues for an evidentiary hearing to address the merits of his conviction in part based on issues that the state court failed to consider during his state application. (D.E. 37, at 2-3). Respondent

has filed a motion for summary judgment. (D.E. 19). Petitioner has filed a response opposing the motion for summary judgment. (D.E. 37). If an evidentiary hearing is determined to be necessary, then one will be set.

Accordingly, it is ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 37), be DENIED without prejudice.

ORDERED this 2nd day of December 2011.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE